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**Technology, Energy &  
Communications Committee**

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**HB 2609**

**Brief Description:** Modifying utility tax provisions.

**Sponsors:** Representatives Morris, B. Sullivan and Linville.

**Brief Summary of Bill**

- Replaces the state public utility tax on light and power businesses with a wholesale energy transaction tax on the volume of electricity transmitted within the state.
- Sets the rate for the new volumetric tax at 0.2 cents per kilowatt-hour for electricity that is delivered for distribution or produced for export from the state.
- Recreates the tax exemptions, deductions, and credits under the public utility tax for light and power businesses as exemptions or credits under the new volumetric tax.
- Modifies the public utility district privilege tax to subject all public utilities to the privilege tax.
- Increase the rates under the privilege tax relating to electricity services and sales.
- Imposes a new tax on sales of wholesale telecommunication services by public utilities.

**Hearing Date:** 1/20/06

**Staff:** Scott Richards (786-7156).

**Background:**

Public utilities are subject to a number of taxes within Washington State. For electric businesses, these include the state public utility tax, property taxes, and the public utility district privilege tax.

*State Taxes on Electricity Utilities*

Washington State public utility tax. Public and privately-owned utilities, including light and power (L&P) businesses, are subject to the state public utility tax (PUT). The PUT is applied to the gross receipts of the business. For L&P businesses, the applicable tax rate is 3.873 percent. Revenues are deposited to the state general fund.

While L&P businesses are defined to include plants or systems that generate, produce, wheel, or distribute electrical energy, businesses that wholesale electrical energy are exempt on income derived from wholesales. Thus, with respect to taxation of electricity businesses, the PUT effectively applies to retail distribution utilities only.

The PUT does not permit deductions for the costs of doing business, such as payments for raw materials and wages of employees. Nonetheless, several deductions and credits for specific types of business activities are allowed under the PUT. In addition to the wholesales of electrical energy, these activities include production of energy through cogeneration or by using renewable energy resources; the distribution of electricity by L&P businesses whose customers are geographically disbursed; sales of electricity to direct service industrial businesses; and discounts to low-income customers.

Montana wholesale energy transaction tax. On January 1, 2000, a new wholesale energy transaction (WET) tax went into effect in the State of Montana. The tax is imposed upon all electricity transmitted and sold within Montana. The tax rate is set at 0.015 cents per kilowatt-hour. If the electricity is produced in-state and sold out of state, the taxpayer is the person owning the electrical generation property, and the tax is collected by the transmission services provider. If the electricity is produced in-state for delivery in-state, or is produced outside the state for delivery in-state, the taxpayer is the distribution services provider, and the tax is collected by the transmission services provider.

The Montana WET tax includes several exemptions, including electricity that is transmitted through the state that is neither produced or consumed in the state; electricity generated in the state by an agency of the federal government for delivery outside the state; electricity delivered to a purchaser that receives its power directly from a transmission or distribution facility owned by an entity of the United States government; and electricity that has been subject to the transmission tax in another state.

The Montana WET tax is collected quarterly and is due 60 days after the end of the quarter to which the tax applies. The revenue from the tax is deposited in the Montana general fund.

*Taxes "In-Lieu" of Property Tax: Public Utility District Privilege Tax.*

Public utility districts (PUDs) that generate, transmit, or distribute electricity are subject to a tax known as the public utility district (PUD) privilege tax. The state tax is generally considered a tax "in-lieu" of property taxes, since local jurisdictions are prohibited from levying property taxes on public property. Tax receipts are shared with local governments and are distributed in a manner that somewhat approximates the way in which property taxes would be distributed.

The PUD privilege tax includes three separate tax bases: electricity that is distributed to PUD customers; electricity that is generated by PUDs at hydroelectric and other facilities; and electricity that is generated by thermonuclear facilities on federal lands, which applies specifically to the nuclear generation facility operated on the Hanford reservation by Energy Northwest. On electricity distributed to retail PUD customers, the tax rate is 2 percent of the gross revenue received from the retail sales. On electricity that is generated, the tax rate is equal to 5 percent of the first 0.4 cents of wholesale value of each kilowatt-hour of electricity. On electricity that is generated by the Hanford thermonuclear plant, the tax rate is 1.5 percent of the wholesale value of the electricity. An additional surtax is applied to each rate, equal to 7 percent multiplied by the rate.

Under the PUD privilege tax, municipalities are permitted to tax PUD facilities located within a city. The tax is based on the gross revenues from the sale of electricity to consumers within the

city. The rate is unspecified but presumed to be no more than 6 percent, the same as the rate for taxes on other electric utilities that operate in cities.

The PUD privilege tax is administered by the Department of Revenue. The administrative requirements of the taxpayers and the department differ than those under other excise taxes. For example, PUDs are required to file annual reports of taxable activity, whereas under the state public utility tax taxpayers may be required to file monthly. In addition, there are specific provisions for sharing the tax revenues with the local jurisdictions in which the PUD assets are located. The tax also includes provisions for the circumstance in which the PUD acquires private property for the purpose of operating electrical facilities. Under these provisions, the PUD is authorized or required to make payments to affected local governments.

In the 1999 state budget, the Department of Revenue was directed to do a study of the taxation of the electric industry within Washington State. The Department's study provided an examination of state and local taxes paid by the electric industry, evaluated the possible effects of Washington taxes on interstate and intrastate competition and on economic development within the industry, and offered various taxing options for consideration. Among other conclusions, the Department found that for entities that own electrical generation assets, the tax system places a bigger burden on investor-owned utilities than public utilities. The bigger burden is a result of differences between property taxes paid by privately held investor-owned utilities and PUD privilege taxes and compensatory payments paid by PUDs and municipal utilities.

#### *Wholesale Telecommunications Services Offered by Public Utility Districts*

In 2000, the Legislature provided public utility districts and port districts the authority to provide wholesale telecommunications services. The law allowed PUDs and port districts to utilize excess capacity on high-speed telecommunication infrastructure that had been installed for utility communications purposes. Under the law, these districts could sell this capacity to internet service providers and other telecommunications service retailers to provide services to customers both within and outside of the districts.

The high-speed telecommunication infrastructure is not subject to property taxes, since the districts are public. There is no tax "in-lieu" of property tax on the infrastructure.

#### **Summary of Bill:**

The state public utility tax on light and power businesses is replaced with a wholesale energy transaction tax on the volume of electricity transmitted within the state. The public utility district privilege tax is modified to subject all public utilities to the tax, to increase the tax rates that apply to electricity retail sales and wholesales, and to impose a new tax on sales of wholesale telecommunication services by public utilities.

#### *State Tax on Electricity Utilities*

The state public utility tax on light and power businesses is eliminated, and a new volumetric tax is imposed on electricity that is transmitted through the state. The tax is imposed at a rate of 0.2 cents per kilowatt-hour of electricity transmitted. For electricity delivered within the state, the tax is paid by the retail utility distributing the electricity to customers. For electricity that is produced within the state and exported from the state, the taxpayer is the business that generates the electricity. The tax base for electricity that is exported is determined by a formula equal to 95 percent of the net amount of electricity generated within the state, less the amount of electricity

sold at retail within the state, less the amount of electricity sold at wholesale to retail utilities within the state.

Exemptions from the new volumetric tax are allowed for electricity that is transmitted through the state and that is neither produced nor consumed in the state and for electricity that is delivered to a consumer that buys electricity directly from an agency of the United States government. In addition, agencies of the United States government are exempt from the provisions of the tax.

A credit against the new volumetric tax is allowed if the taxpayer paid tax in another state on the transmission of the same electricity.

Certain deductions and credits that are allowed under the state public utility tax for light and power businesses are recreated as credits under the new volumetric tax. These incentives concern the following activities: financial contributions made to rural electric utility development projects; income from sales of power to direct service industrial customers; billing discounts to low-income customers; and certain income for power companies whose customers are geographically dispersed.

The deduction that is allowed under the state public utility tax for income derived from wholesales of electricity is eliminated, since the new volumetric tax applies to all electricity that is transmitted through the state.

#### *Public Utility Privilege Tax for Electricity Services*

The public utility district privilege tax on electricity is modified to apply to all public utilities. In addition to public utility districts, these utilities include all cities and towns that operate a plant or system for the generation, transmission, or distribution of electric energy for sale.

Two of the rates for the privilege tax on electricity are modified. On electricity distributed to retail PUD customers, the tax rate is 2.28 percent of the gross revenue received from the retail sales. On electricity that is generated, the tax rate is equal to 21.15 percent of the first 0.4 cents of wholesale value of each kilowatt-hour of electricity.

Administrative and other provisions within the privilege tax are modified so as to apply to public utilities, generally.

#### *Public Utility Privilege Tax on Wholesale Telecommunication Services*

A new tax is imposed on public utilities for the privilege of operating facilities for the purpose of providing wholesale telecommunication services. The tax base is the wholesale value of the telecommunication services sold. The bill does not specify the tax rate.

The new tax on wholesale telecommunication services is subject to the administrative and other requirements for the public utility privilege tax on electricity. The annual requirements that include reporting of taxable activity are modified to include information pertaining to the wholesale telecommunication facilities and to the wholesale services sold. The provisions that govern the distribution of revenues are modified to address the revenues received from the new tax, in a manner similar to revenues received under the privilege tax on electricity. Municipalities are authorized to impose business taxes on the wholesale of telecommunication services by PUDs. Other requirements concerning the compensation to local jurisdictions for the acquisition of private property are also modified to include telecommunications properties acquired.

**Appropriation:** None.

**Fiscal Note:** Requested on 1/16/06.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.